

**McGUIREWOODS LLP**

Matthew C. Kane (SBN 171829)

Email: [mkane@mcguirewoods.com](mailto:mkane@mcguirewoods.com)

Bethany A. Pelliconi (SBN 182920)

Email: [bpelliconi@mcguirewoods.com](mailto:bpelliconi@mcguirewoods.com)

Sylvia J. Kim (SBN 258363)

Email: [skim@mcguirewoods.com](mailto:skim@mcguirewoods.com)

1800 Century Park East, 8<sup>th</sup> Floor

Los Angeles, California 90067

Telephone: (310) 315-8200

Facsimile: (310) 315-8210

Attorneys for Defendants

MERRILL LYNCH & CO., INC. and

MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC.

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

TREVOR CALLAN, TIMOTHY CALLAN  
and RYAN CALLAN, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

MERRILL LYNCH & CO., INC., ET AL.,

Defendants.

CASE NO. 09-CV-0566 BEN (WMc)

**NOTICE OF ERRATA REGARDING:**

(1) **MEMORANDUM OF  
POINTS AND AUTHORITIES  
(DKT. #95)**

– AND –

(2) **DECLARATION OF  
DIANE WALLER (DKT. #95-6)**

**FILED IN SUPPORT OF  
MERRILL LYNCH DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT OR PARTIAL SUMMARY  
JUDGMENT**

**Date:** June 28, 2010

**Time:** 10:30 a.m.

**Courtroom:** 3

**Judge:** Hon. Roger T. Benitez

**NOTICE OF ERRATA**

**TO THE HONORABLE ROGER T. BENITEZ AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that certain inadvertent errors have been discovered in the **Memorandum of Points and Authorities** (Dkt. #95) and **Declaration of Diane Waller** (Dkt. #95-6) filed in support of the Merrill Lynch Defendants' **Motion for Judgment on the Pleadings or, In the Alternative, for Summary Judgment or Partial Summary Judgment** (Dkt. #95) which was filed in this action on May 28, 2010. The *corrected* text passages from each document are shown below in red-lined format.

**MEMORANDUM OF POINTS AND AUTHORITIES (DKT. #95)**

**Corrected Text of 1<sup>st</sup> Paragraph of Section II.I at p. 7:8-13:**

**I. The Settlement Of The ERISA Action Approved By The SDNY Court.**

In addition to the FACAAP, Growth Plan, and WealthBuilder Plans at issue in this action, Plaintiffs also participated in certain Merrill Lynch retirement plans, including the **Merrill Lynch & Co., Inc. Retirement Accumulation Plan** (the "RAP") and the Merrill Lynch & Co., Inc. 401(k) Savings and Investment Plan (the "401(k) Plan"), and their RAP and/or 401(k) Plan accounts included investments in **Merrill Lynch stock** during the time period of **September 30, 2006 to December, 31, 2008**. Waller Decl., Exhs. G-ID-F.

**Corrected Text of 1<sup>st</sup> Paragraph of Section III.B at p. 11:12-28:**

**B. All Of Plaintiffs' Claims Are Barred By The ERISA Action Judgment.**

Plaintiffs participated in the RAP retirement plan and the 401(k) Plan, and their RAP and/or 401(k) Plan accounts included investments in Merrill Lynch stock between September 30, 2006 and December, 31, 2008. Waller Decl., Exhs. G-I. Accordingly, Plaintiffs are members of

the "Class" and are "Class Members" as defined in the Settlement Stipulation approved by the Judgment in the ERISA Action. Kane Decl., Exh. B, Exh. 1, p. 5 at § 1.3, p. 9 at § 1.33. Moreover, all of the Plaintiffs' claims being asserted in this action "arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions" asserted in the ERISA Action, including without limitation Merrill Lynch's dealings with its employees (including FA's) in providing them with compensation. Indeed, certain of the Plaintiffs' claims in this action arise from the *exact same* alleged misrepresentations about the *exact same* investment portfolios made in the *exact same* SEC filings and public disclosures, allegedly resulting in the *exact same* decline in the value of Merrill Lynch stock as alleged in the ERISA Action. *Id.*, Exh. C, ¶¶ 5-6. Thus, all of the purported claims Plaintiffs are asserting against the Defendants in this action are claims that could have been – and indeed some of them have been – asserted in the ERISA Action prior to the final approval of the Settlement Stipulation by the SDNY Court. *Id.*, Exh. B, Exh. 1, p. 8 at § 1.24, p. 10 at § 1.41, p. 13 at § 1.49.

**DECLARATION OF DIANE WALLER (DKT. #95-6)**

**Corrected Text of Paragraph 13 at p. 5:8-14:**

13. In addition to the Plans, Plaintiffs also participated in the Merrill Lynch & Co., Inc. Retirement Accumulation Plan (the "RAP") and the Merrill Lynch & Co., Inc. 401(k) Savings and Investment Plan (the "401(k) Plan"). Plaintiffs' participated in the RAP and 401(k) Plan during the period September 30, 2006 to December 31, 2008, and during that period their RAP and/or 401(k) Plan participant accounts included investments in Merrill Lynch stock. Attached hereto as Exhibits G, ~~H~~ and I are true and correct copies of Retirement Accumulation Plan Allocation Summaries for ~~all three~~ Plaintiffs Trevor Callan and Ryan Callan showing their participation in the RAP and their stock holdings in their accounts during the aforementioned period. Attached hereto as Exhibit H is a true and correct copy of a 401(k) Savings & Investment Plan Allocation Summary for Plaintiff Timothy Callan showing his participation in the 401(k) Plan and his stock holdings in his account during the aforementioned period.

1 If requested by the Court to do so, Defendants can and will file amended full versions of  
2 their Memorandum of Points and Authorities (Dkt. #95) and/or Declaration of Diane Waller (Dkt.  
3 #95-6) with the foregoing corrections.

4  
5 DATED: May 29, 2010

**McGUIREWOODS LLP**

6  
7 By: /s/ Matthew C. Kane

Matthew C. Kane

Bethany A. Pelliconi

Sylvia J. Kim

Attorneys for Defendants

MERRILL LYNCH & CO., INC. and

MERRILL, LYNCH, PIERCE, FENNER &  
SMITH, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2010, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and service via transmittal of a Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 29, 2010, at Los Angeles, California.

/s/ Matthew C. Kane  
Matthew C. Kane